IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

Bail Appl..No. 6108 of 2007()

[CRIME NO.196/2007 OF TOWN POLICE STATION, KOZHIKODE]

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PETITIONERS/ACCUSED:

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1. SIVAN @ SIVADASAN,
   S/O.KUNHIKANDAN, KARAYATHINGAL HOUSE,
   P.O.MUTTANCHERRY VIA, NARIKUNNI, KOZHIKODE
   DISTRICT.

2. K.K.MUHAMMED, S/O.ABOOBACKER,
   KARUVARAKKODE HOUSE, MANIPURAM,
   KODUVALLY,KOZHIKODE DISTRICT.

3. KUTTAN ALIAS BALAKRISHNAN,
   S/O.G.KRISHNAMOORTHY, CHEKAYAMVALAPPIL,
   VELLAYIL, KOZHIKODE DISTRICT.

BY ADV. SRI.P.M.MOHAMED ALI
SRI.AYPE JOSEPH

RESPONDENT/COMPLAINANT:

STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR,HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 09/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.6108 of 2007

Dated this the 9th day of October 2007

O R D E R

Application for anticipatory bail. The petitioners are accused 1 to 3. Altogether there are three accused persons. The alleged incident took place at 11 a.m on 12/9/2007. The victim/ de facto complainant had suffered a fracture of the ulna in the incident. The incident, it is alleged was consequential to the dispute between A.I.T.U.C and C.I.T.U workers. The F.I statement was lodged on 14/9/2007. The petitioners are named in the F.I.statement. Crime is registered. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are in no way connected with the incident. They do not belong to C.I.T.U. They have nothing to do with the dispute between C.I.T.U and A.I.T.U.C workers. The fact that there was delay in the recording of the F.I statement must suggest to the court that the de facto complainant did not at the first instance know the name and details of the assailants. That is why the F.I statement was lodged only on 14/9/2007 with the

names of the petitioners included therein. In these circumstances, anticipatory bail may be granted to the petitioners, it is prayed.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that nothing can be made out of the alleged delay in the recording of the F.I statement. The injured was initially taken to a local Government hospital from where he had rushed to the Medical College Hospital. He had suffered serious injuries - fracture of the ulna. Delay in the police reaching the de facto complainant to record the F.I statement cannot at all affect the validity of the allegation or persuade the court to doubt the acceptability of the implication of the petitioners in such F.I statement, it is urged.

4. I have considered all the relevant inputs. At this early stage I shall not embark on any detailed discussion about the acceptability of the allegation or the credibility of the data collected. Suffice it to say that I find merit in the opposition by the learned Public Prosecutor. I find no features in this case which can persuade this court to invoke the extraordinary equitable discretion under Section 438 Cr.P.C. This, I agree with

the learned Public Prosecutor, is a fit case where the petitioners must appear before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail in the normal and ordinary course.

5. In the result, this petition is dismissed. Needless to say, if the petitioners surrender before the investigating officer or the learned Magistrate and apply for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007